



A \$50 million puzzle

How best to distribute liability for steam explosion fatalities?



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WILLIAM LIGHTFOOT: The plaintiffs' attorney is keeping out of the defendants' disputes.

BY ZOE TILLMAN

A six-year round of musical chairs over liability for a fatal steam explosion in downtown Washington is set to wind down this summer. With \$50 million in potential damages at stake, the federal government and contractors are maneuvering to make sure they aren't the last ones standing.

The dispute stems from wrongful death claims filed by families

of Joseph Hudert and Francis Stotmeister, the two men killed in the 2004 explosion. Both were employed by companies contracted through the U.S. General Services Administration (GSA) to work on steam and water systems connecting to the New Executive Office Building.

Faced with damages requests of \$20 million and \$30 million, the eight defendants—including the federal government and the con-

tractors and subcontractors—have filed dozens of cross-claims and third-party complaints over who should be liable under indemnification and contribution provisions in the various contracts.

The defendants all have denied any wrongdoing, blaming one another amid allegations that the project was mishandled and that the parties failed to take steps needed to protect workers.

After years of back and forth, there are signs both cases—consolidated for the purposes of discovery—are moving forward. U.S. District Judge Reggie Walton gave the parties until July to file arguments on the indemnity question, and Walton heard oral arguments on April 7 regarding the federal government's motion for summary judgment in the Stotmeister case, where they were brought in as a third-party defendant.

William Lightfoot of Washington's Koonz, McKenney, Johnson, DePaolis & Lightfoot, lead counsel for the Stotmeister family, said he is staying out of the defendants' disputes for the most part, but that could change depending on the arguments that come up. For instance, on April 7, Lightfoot challenged the government's contention that they should be dismissed because Stotmeister was exceeding the scope of his duties on the proj-

ect at the time of the accident, but Lightfoot is supporting the government's motion on the question of contractual liability.

In the meantime, Lightfoot said, "discovery is ongoing, we're taking depositions, answering interrogatories, producing documents and preparing for trial."

The cross-claims and third-party complaints boil down to conflicting interpretations of how the contracts assign liability and who was responsible for the accident.

The two cases offer dramatic examples of relatively common disputes that arise when the government brings in contractors who in turn bring in subcontractors, said Stephen Palley, a construction law attorney in the Washington office of Ober, Kaler, Grimes & Shriver.

"The [property] owner pushes as much of the risk down to their prime contractor as they can, and the contractor flows it down to their subcontractor," he said.

In a perfect world, indemnification, contribution and additional insured provisions in each contract and subcontract would match, said Alfred Scanlan Jr. of Washington's Jackson & Campbell. Scanlan is counsel for one of the defendants, Consolidated Engineering Services Inc., or CES. But because subcontractors often take on only part of the larger project, he said, "that doesn't happen."

In a case with so much at stake and so many parties involved, Lightfoot said, it isn't surprising that the cross-claims and third-party disputes have taken so much time to play out.

The parties agree on a few facts. Hudert and Stotmeister were employees of companies hired for a steam-system replacement and water tie-in project on 17th Street in Northwest Washington. They

died from injuries sustained when a blast of steam and water shot up through a manhole where they were working.

The GSA division that handles heating operations contracted with Grunley-Walsh Joint Venture LLC, a Maryland construction company, to do the work; Stotmeister was a construction superintendant for Grunley-Walsh.

Grunley-Walsh hired two subcontractors, Gaithersburg, Md.-based M&M Welding & Fabricators Inc. and Jessup, Md.-based Cherry Hill Construction Inc. Hudert worked for Cherry Hill.

Since the project involved an executive office building, a separate GSA division contracted with Alion Science and Technology Corp., a Virginia company, to observe the project, according to Alion's attorney, Joseph Beavers of Baltimore's Miles & Stockbridge.

The extent to which each of the contractors and subcontractors, as well as the government, were responsible for worksite oversight is under dispute.

ADDITIONAL DEFENDANTS

Three additional defendants were named for their role in inspecting and maintaining the steam- and water-distribution systems: Philadelphia contractor Day & Zimmerman Services, Arlington, Va.-based CES and the District of Columbia Water and Sewer Authority.

The lawsuits filed by each family differ slightly regarding first-party defendants, but the federal government (on behalf of the GSA), Grunley-Walsh, M&M, Cherry Hill, Alion, Day & Zimmerman, CES and the water authority all have been brought into both cases either as first- or third-party defendants.

Walton dismissed CES as a defen-

dant several years ago, after the company argued it took over maintenance months after the accident. But Day & Zimmerman pulled them back in last month, claiming that contracts the two entered into place liability at CES' door. Day & Zimmerman's attorney, Michael Hamilton of Marks, O'Neill, O'Brien & Courtney's Wilmington, Del., office, declined to discuss the case.

Walton granted the request to reinstate CES as a party on March 22; CES filed a motion to reconsider and strike on both substantive and procedural grounds this month. Scanlan declined to comment on case specifics.

Palley said it is hard to predict the outcome of these cases, since there is no standard for how indemnification and contribution are handled in contracts among government, contractors and subcontractors. Another possible variable is the degree to which the defendants' insurance companies are involved in crafting responses and strategy. "It's not crazy for something like this to go on this long," he said.

Stotmeister's wife, Mary Stotmeister, who was in court on April 7 and has been following the defendants' disputes, said that nearly seven years after the accident, she looks forward to seeing the cases resolved. "It'll be nice at some point to put this behind us," she said.

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